

HOUSE BILL REPORT

SSB 6322

As Reported by House Committee On:
Criminal Justice & Corrections
Appropriations

Title: An act relating to electronic monitoring of sex offenders.

Brief Description: Relating to electronic monitoring of sex offenders.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Regala, Brandland, Kohl-Welles, Carrell, Kastama, Stevens, Keiser, Doumit, Rockefeller, Kline, Rasmussen, Berkey, Haugen, Shin, Jacobsen, McAuliffe, Pflug, Sheldon, Roach and Benton).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/17/06, 2/23/06 [DPA];

Appropriations: 2/25/06, 2/27/06 [DPA(CJC)].

**Brief Summary of Substitute Bill
(As Amended by House Committee)**

- Authorizes the Department of Corrections to electronically monitor certain sex offenders as a condition of community custody using the most appropriate technology given the individual circumstances of the offender.
- Provides a definition of "electronic monitoring."

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass as amended. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kirby, Strow and Williams.

Staff: Lara Zarowsky (786-7119) and Jim Morishima (786-7191).

Background:

Sex offenders who commit a first "two-strikes" offense after September 2001, and those who committed one "two-strikes" offense prior to September 2001 and subsequently commit any non-strike sex offense, are subject to determinate-plus sentencing. Rather than a definitive number of days, a determinate-plus sentence consists of a minimum and maximum term of

confinement. The minimum term is generally set within the standard sentencing range, which takes into account the seriousness of the offense and the offender score. The maximum term is equal to the statutory maximum for the offense. Statutory maximums are life for a class A felony, 10 years for a class B felony, and five years for a class C felony. After serving the minimum term, the offender is subject to the jurisdiction of the Indeterminate Sentence Review Board (ISRB) through the end of the maximum term.

An offender will be released from custody after serving the minimum term unless the ISRB finds the offender more likely than not to commit a future predatory sex offense. When the offender is released, he or she will be in community custody until the expiration of the maximum term. The obligations of community custody must include certain conditions, such as reporting to a community corrections officer and obtaining residence approval from the Department of Corrections (DOC).

The term "community custody," refers to the period following release from total confinement in which an offender is supervised by the DOC. Community custody is that portion of an offender's sentence served in the community, subject to conditions imposed by the sentencing court and the DOC. An offender may be sanctioned administratively by the DOC for violating his or her conditions of release.

Certain crimes, including sex offenses not qualifying for determinate-plus sentencing, serious violent offenses, crimes against a person, and some drug offenses carry a mandatory term of community custody. Unless waived by the court, certain mandatory conditions are required to be included in the term of community custody. Special conditions, such as crime-related prohibitions, may also be included. The DOC assesses an offender's risk of re-offense, and may modify or impose conditions of community custody in addition to those imposed by the court, provided they do not contravene or decrease the court's order. For example, the DOC may require an offender to participate in rehabilitative programs or perform affirmative conduct according to the offender's risk of re-offense.

An offender accused of violating a condition of community custody is entitled to a hearing before the DOC prior to the imposition of sanctions are imposed. If an offender is found to be in violation of a condition of community custody, the DOC may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any time actually spent in community custody.

Summary of Amended Bill:

The DOC may recommend and the ISRB may impose electronic monitoring as a condition of community custody for determinate-plus sex offenders. The DOC may impose electronic monitoring for offenders serving a term of community custody pursuant to conviction for a sex offense not qualifying for determinate-plus sentencing. Electronic monitoring is defined as the monitoring of an offender using an electronic tracking system using radio frequency or active or passive global positioning system technology. The DOC is required to carry out any electronic monitoring condition within available resources using the most appropriate

monitoring technology given the individual circumstances of the offender. The following entities and their employees are extended civil immunity for damages arising from incidents involving offenders placed on electronic monitoring, unless acting with gross negligence or in bad faith: local governments, the DOC, and the Washington Association of Sheriffs and Police Chiefs.

Amended Bill Compared to Substitute Bill:

Clarifies that the electronic monitoring provision applies only to those sentenced to a term of community custody pursuant to conviction for a sex offense. Allows the DOC to recommend and the ISRB to impose electronic monitoring as a condition of community custody for determinate-plus sex offenders. Clarifies that the word "department" contained within the immunity provision refers to the DOC.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) Electronic monitoring is a valuable tool, even if it isn't able to absolutely prevent crime. This bill allows the DOC discretion to provide the most appropriate technology. The bill is aimed to supply flexibility and to get at the offenders for which it will have the most impact. This is accomplished with minimal impact on state resources, and liability protection. Under this bill we will be able to use a good technology in the most beneficial way.

(Concerns) Electronic monitoring is good technology that should be used, but only when it is used in conjunction with treatment. This can be one of the most effective ways to manage sex offenders in the community. However, this is not a panacea - it should not be imposed with the belief that it will serve its purpose without treatment. It should be used wisely and in the appropriate circumstances, certainly with the most serious offenders, but it should be tied to treatment.

Testimony Against: None.

Persons Testifying: Senator Regala, prime sponsor; and James McMahan and Don Pierce, Washington Association of Sheriffs and Police Chiefs.

(Concerns) Todd Maybrown, Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Criminal Justice & Corrections. Signed by 30 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Armstrong, Bailey, Buri, Chandler, Clements, Cody, Darneille, Dunshee, Grant, Haigh, Hinkle, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Miloscia, Pearson, Priest, Schual-Berke, P. Sullivan, Talcott and Walsh.

Staff: Bernard Dean (786-7130).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Criminal Justice & Corrections:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: None.

Testimony Against: None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.